COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, APRIL 18, 2008

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. BFI-2007-00161

Ex Parte: In re: credit union
service organizations

ORDER TO TAKE NOTICE

On October 5, 2007, the State Corporation Commission ("Commission") entered an Order To Take Notice of regulations proposed by the Bureau of Financial Institutions ("Bureau") that would authorize state-chartered credit unions to invest in or make loans to credit union service organizations on similar terms and conditions as federal credit unions. The Order and proposed regulations were published in the Virginia Register on October 29, 2007, posted on the Commission's website, and mailed to all state-chartered credit unions and other interested persons. Credit unions and other interested persons were given until December 14, 2007, to file written comments or request a hearing.

The Commission received comment letters from various credit unions and organizations as well as several requests for a hearing. On December 21, 2007, the Commission entered an Order scheduling a hearing for February 26, 2008, in order to consider the adoption of the proposed regulations. The Commission also directed the Bureau to meet with representatives from those entities that submitted comments in an attempt to narrow the issues for the Commission's consideration at the hearing. The Commission's Order also required the Bureau to make a filing in this case in which it (i) identified any issues that had been resolved as a result of the Bureau's meeting, and (ii) responded to the comments filed in this case that pertained to issues that remained unresolved after the Bureau's meeting.

On February 15, 2008, the Bureau filed its Response to Comments. In its Response, the Bureau informed the Commission that as a result of its meeting with representatives from those entities that submitted comments, the credit unions and organizations that initially requested a hearing no longer desired a hearing and had withdrawn their requests. The Bureau also informed the Commission that it had drafted certain changes to the proposed regulations in order to address the commenters' issues and concerns. The Bureau attached to its Response the draft regulations that were agreed to by the Bureau and the commenters.

NOW THE COMMISSION, having considered the record, the proposed regulations, the comments filed, and the Bureau's Response, finds that the proposed regulations should be modified to reflect the changes agreed to by the Bureau and the commenters, and that all state-chartered credit unions and other interested parties should be afforded an opportunity to file written comments or request a hearing on the modified proposed regulations.

IT IS THEREFORE ORDERED THAT:

(1) The modified proposed regulations are appended hereto and made a part of the record herein.

(2) Comments or requests for a hearing on the modified proposed regulations must be submitted in writing to Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, on or before May 23, 2008. Comments should be limited to the modifications made to the proposed regulations and not reiterate comments that were previously filed in this case. Requests for hearing shall state why a hearing is necessary and why the issues cannot be adequately addressed in written comments. All correspondence shall contain a reference to Case No. BFI-2007-00161. Interested persons

desiring to submit comments or request a hearing electronically may do so by following the instructions available at the Commission's website: http://www.scc.virginia.gov/case.

(3) The modified proposed regulations shall be posted on the Commission's website at http://www.scc.virginia.gov/case.

(4) AN ATTESTED COPY hereof, together with a copy of the modified proposed regulations, shall be sent to the Registrar of Regulations for publication in the Virginia Register.

AN ATTESTED COPY hereof shall be sent to the Commissioner of Financial Institutions, who shall forthwith mail a copy of this Order, together with a copy of the modified proposed regulations, to all state-chartered credit unions and such other interested parties as he may designate.

STATE CORPORATION COMMISSION

10 VAC 5-40 CREDIT UNIONS

10VAC5-40-5. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Credit union service organization" or "CUSO" means a corporation, limited liability company, or limited partnership [~~of which more than 50% of~~ ,] the voting shares or ownership interest [of which] is [primarily] held, directly or indirectly, by one or more credit unions or organizations of credit unions.

"GAAP" means generally accepted accounting principles.

"Immediate family member" means a spouse or other family member living in the same household.

"Officials" means a credit union's directors or committee members.

"Reserves" means the total of undivided earnings, regular reserves, and any other type of funds held in reserve except allowances for loan losses.

"Senior management employee" means a credit union's chief executive officer (typically the president or treasurer/manager), any assistant chief executive officers (e.g., assistant president, vice president, or assistant treasurer/manager), and the chief financial officer (comptroller).

10VAC5-40-60. Credit union service organizations (CUSOs).

A. 1. Except as otherwise provided in this section, a state-chartered credit union shall not, directly or indirectly, invest its funds or make loans pursuant to subdivision 10 of §6.1-225.57 of the Code of Virginia.

2. [A Except as provided in subsection H of this section, a] CUSO shall not, directly or indirectly, invest any of its funds in a corporation, limited

liability company, partnership, association, trust, or other legal or commercial entity unless the state-chartered credit union or credit unions having an interest in the CUSO would be permitted to directly invest its funds in such entity and the state-chartered credit union or credit unions comply with the notice [~~requirements~~ requirement] in subsection B and the other provisions of this section.

3. CUSOs shall not, directly or indirectly, acquire control of another depository institution, nor invest in shares, stocks, or obligations of an insurance company, trade association, liquidity facility, or similar organization, corporation, or association.

B. 1. [~~At least 60 days prior to investing in or making loans to a CUSO, either directly or indirectly, a~~ A] state-chartered credit union shall give [the Commissioner of Financial Institutions (commissioner)] written notice of its [~~proposed~~] investment [in] or loans to [~~the Commissioner of Financial Institutions (commissioner) along with a business plan, marketing plan, financial analyses, and any other information the commissioner may require concerning the proposed investment or loans~~ a CUSO].

[~~2. If a state-chartered credit union wishes to subsequently increase the amount of its investment in or loans to a CUSO, it shall give written notice to the commissioner at least 30 days prior to such additional investment or loans along with any additional information the commissioner may require.~~]

[~~3.~~ 2.] A state-chartered credit union may invest up to 5.0% of its outstanding shares and reserves in a CUSO. However, a state-chartered credit union's total investments in all CUSOs shall not exceed, in the aggregate, 5.0% of its outstanding shares and reserves.

[~~4.~~ 3.] A state-chartered credit union may make loans to a CUSO provided that the amount of the loans, when combined with the credit union's total investments in and loans to all CUSOs, does not exceed, in the aggregate, 5.0% of its outstanding shares and reserves.

[~~5.~~ 4.] If the limits specified above are reached or exceeded because of the profitability of the CUSO and the related GAAP valuation of the investment under the equity method, without an additional cash outlay by the state-chartered credit union, divestiture is not required. A state-chartered credit union may continue to invest up to these limits without regard to the increase in the GAAP valuation resulting from a CUSO's profitability.

[~~6.~~ 5.] The 5.0% limits specified in this subsection may be exceeded with prior written approval from the commissioner.

C. 1. A state-chartered credit union may invest in or make loans to a CUSO only if the CUSO is or will be structured as a corporation, limited liability company, or limited partnership. A state-chartered credit union may only participate in a limited partnership as a limited partner.

2. A state-chartered credit union may invest in or make loans to a CUSO only if the CUSO [~~is or will be providing its products and services exclusively to (i) the credit union or credit unions that have invested in the CUSO; (ii) the members of the credit union or credit unions that have invested in the CUSO; (iii) other credit unions; and (iv) organizations of credit unions~~ primarily serves credit unions, its membership, or the membership of credit unions contracting with the CUSO].

3. A state-chartered credit union shall account for its investments in or loans to a CUSO in conformity with GAAP.

4. A state-chartered credit union shall obtain written agreements from a CUSO, prior to investing in or making loans to the CUSO, that the CUSO shall:

a. Account for all of its transactions in accordance with GAAP;

b. Prepare quarterly financial statements and obtain an annual financial statement audit of its financial statements by a licensed certified public accountant in accordance with generally accepted auditing standards. A wholly owned CUSO is not required to obtain a separate annual financial statement audit if it is included in the annual consolidated financial statement audit of the credit union that is its parent; and

c. Provide the Bureau of Financial Institutions (bureau) and its staff with complete access to any books and records of the CUSO and the ability to review CUSO internal controls, as deemed necessary by the bureau in carrying out its responsibilities under the Virginia Credit Union Act (§6.1-225.1 et seq. of the Code of Virginia).

5. A CUSO shall comply with all applicable federal, state, and local laws and regulations.

D. 1. A state-chartered credit union and a CUSO shall be operated in a manner that demonstrates to the public the separate existence of the state-chartered credit union and the CUSO. Good business practices dictate that each shall operate so that:

a. Its respective business transactions, accounts, and records are not intermingled;

b. Each observes the formalities of its separate company procedures;

c. Each is adequately financed as a separate unit in light of normal obligations reasonably foreseeable in a business of its size and character;

d. Each is held out to the public as a separate enterprise;

e. The state-chartered credit union does not dominate the CUSO to the extent that the CUSO is treated as a department of the credit union; and

f. Unless the state-chartered credit union has guaranteed a loan obtained by the CUSO, all borrowings by the CUSO shall indicate that the state-chartered credit union is not liable.

2. If a CUSO in which a state-chartered credit union has an investment plans to change its structure, the credit union shall obtain prior, written legal advice that the CUSO shall remain established in a manner that will limit potential exposure of the credit union to no more than the loss of funds invested in or loaned to the CUSO. The legal advice shall address factors that have led courts to "pierce the corporate veil" such as inadequate capitalization, lack of separate corporate identity, common boards of directors and employees, control of one entity over another, and lack of separate books and records. The legal advice may be provided by independent legal counsel of either the investing state-chartered credit union or the CUSO.

E. The commissioner may at any time, based upon supervisory, legal, or safety and soundness considerations, prohibit or otherwise limit any CUSO activities or services.

F. A state-chartered credit union may only invest in or make loans to CUSOs that are or will be sufficiently bonded or insured for their specific operations.

G. A state-chartered credit union may only invest in or make loans to CUSOs that are or will be engaged in activities and services that are reasonably related to the operations of credit unions, including but not limited to the following:

1. Checking and currency services (i.e., check cashing, coin and currency services, money orders, savings bonds, travelers checks, and purchase and sale of U.S. Mint commemorative coin services);

2. Clerical, professional and management services (i.e., accounting services, courier services, credit analyses, facsimile transmissions, copying services, internal audits for credit unions, locator services, management and personnel training and support, marketing services, research services, and supervisory committee audits);

3. Business loan origination;

4. Consumer mortgage loan origination and processing;

5. Electronic transaction services (i.e., automated teller machine (ATM) services, credit card and debit card services, data processing, electronic fund transfer (EFT) services, electronic income tax filing, payment item processing, wire transfer services, and cyber financial services);

6. Financial counseling services (i.e., developing and administering Individual Retirement Accounts (IRAs), Keogh, deferred compensation, and other personnel benefit plans, estate planning, financial planning and counseling, income tax preparation, investment counseling, and retirement counseling);

7. Fixed asset services (i.e., management, development, sale, or lease of fixed assets, and sale, lease, or servicing of computer hardware or software);

8. Insurance brokerage or agency (i.e., agency for sale of insurance, provision of vehicle warranty programs, and provision of group purchasing programs);

9. Leasing personal property and real estate leasing of excess CUSO property;

10. Loan support services (i.e., debt collection services, loan processing, loan servicing, loan sales, and selling repossessed collateral);

11. Record retention, security and disaster recovery services (i.e., alarm-monitoring and other security services, disaster recovery services, microfilm, microfiche, optical and electronic imaging, CD-ROM data storage and retrieval services, provision of forms and supplies, and record retention and storage);

12. Securities brokerage services;

13. Shared credit union branch (service center) operations;

14. Student loan origination;

[15. Travel agency services;]

[~~15.~~ 16.] Trust and trust-related services (i.e., acting as administrator for prepaid legal service plans, acting as trustee, guardian, conservator, estate administrator, or in any other fiduciary capacity, and other trust services); and

[~~16.~~ 17.] Real estate brokerage services and real estate listing services.

[H. In connection with providing a permissible service, a CUSO may invest in a non-CUSO service provider. The amount of the CUSO's investment is limited to the amount necessary to participate in the service provider, or a greater amount if necessary to receive a reduced price for goods or services.]

[~~H.~~ I.] In order for a state-chartered credit union to invest in or make loans to a CUSO that is or will be engaged in activities or services that are not enumerated in subsection G of this section, the state-chartered credit union shall obtain prior approval from the State Corporation Commission (commission). A request for commission approval of an activity or service that is not enumerated in subsection G of this section shall be submitted [~~with the written notice required by subsection B of this section~~ in writing to the commissioner] and include a full explanation and complete documentation of the activity or service and how that activity or service is reasonably related to the operations of credit unions.

[~~I.~~ J.] 1. If a state-chartered credit union has outstanding loans or investments in a CUSO, then the credit union's officials, senior management employees, and their immediate family members shall not receive, either directly or indirectly, any salary, commission, investment income, or other income or compensation from the CUSO or from any person being served through the CUSO. This provision does not prohibit the credit union's officials or senior management employees from assisting in the operation of a CUSO, provided the officials or senior management employees are not compensated by the CUSO. Furthermore, the CUSO may reimburse the state-chartered credit union for the services provided by such credit union officials and senior management employees only if the account receivable of the credit union due from the CUSO is paid in full at least every 120 days.

2. The prohibition contained in subdivision 1 of this subsection also applies to state-chartered credit union employees not otherwise covered if the employees are directly involved in dealing with the CUSO, unless the state-chartered credit union's board of directors determines that the credit union's employees' positions do not present a conflict of interest.

3. All transactions with business associates or family members of state-chartered credit union officials, senior management employees, or their immediate family members that are not specifically prohibited by subdivision 1 or 2 of this subsection shall be conducted at arm's length and in the interest of the state-chartered credit union.

[~~J.~~ K.] 1. A state-chartered credit union's investments in CUSOs in existence prior to [~~February~~ July] 1, 2008, shall conform with this section no later than [~~August 1, 2008~~ January 1, 2009], unless the commissioner grants prior written approval to continue the credit union's investments for a stated period.

2. A state-chartered credit union's loans to CUSOs in existence prior to [~~February~~ July] 1, 2008, shall conform with this section no later than [~~August 1, 2008~~ January 1, 2009], unless (i) the commissioner grants prior written approval to continue the credit union's loans for a stated period, or (ii) under the terms of its loan agreement, the credit union cannot require accelerated repayment without breaching the agreement.